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THE NATIONAL LABOR RELATIONS BOARD AND ITS WORK

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Costly Strikes

The Senate Labor Committee estimates that strikes cost the United States one billion dollars every year.

During 1933 and 1934 more than 32,000,000 working days were lost because of labor controversies. The goods which could have been produced during those thirty-two million days were forever lost. Some 600,000 weekly pay envelopes were never handed out to families on strike. In the long run this burden falls on the public, which always pays the cost of strikes.

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Money losses are not all. Strikes, like War, leave painful readjustments in their wake. Their unpublicized aftermath brings misery to workers long after the headlines are forgotten. Thousands of men and women never get their jobs back. Workers lose their homes and their savings. Many move away from communities where they had friends. Children leave school. Stranded workers lose their skill and their hope.

Points to Consider about Strikes

Strikes and lockouts are so often associated with violence and disruption of industry that it is difficult for the public to judge them fairly. The newspapers contribute to this confusion of mind by traditionally playing up sensational street fights and failing to make clear the issues for which each side is fighting. Strike riots make exciting reading but for the public to learn how many heads were broken is not as important as it is to know the relative fairness of the workers' and the managements' proposals.

A clear judgement on industrial disputes must keep those things in mind, that:

(1) While strikes and lockouts are legal,

(2) and disputes are inevitable,

(3) it is better for both parties to come together in the first place in peaceful negotiation.

These points are worth detailed consideration.

(1) Strikes and Lockouts are Legal

The facts are these. The worker has something the employer needs -- the skill of his hands and brain. The employer has something the worker needs -- an opportunity to earn a living. Under the law each has the right to hold back these needs from the other - the employees by striking, the employers by refusing employment - whenever their disagreements have reached a stage where neither party will give in.

Workers do not lightly cut themselves off from pay envelopes; nor do employers like to cut the power switch that stops production. The strength of the forces impelling them to make these steps appears in the fact that in 1919, during the worst of the maladjustments following the war, 4,160,348 workers were reported as involved in 3,630 disputes. That this number was far higher than any reported since that date indicates how automatically disputes follow major shifts in our economic scheme.

There are two main causes which bring men and management to an open break. One is a dispute over hours and wages. The other is a dispute over the right of the workers to organize openly for the purpose of sending their representatives to bargain with management about hours and wages.

For 160 years, ever since the printers first struck in New York in 1776, America has accepted the strike as a legal means for workers to bring pressure for better wages and hours, and the lock-out as the employer's method of resisting their demands. The strike for the right to organize and bargain collectively has less recently been recognized as legal. By 1921, however, Chief Justice Taft said from the Supreme Court bench: "The right to combine for such a lawful purpose has in many years not been denied by any court." The most recent confirmation of this right appears in the decision of the Circuit Court of Appeals for the Second Circuit (handed down June 16, 1936, in the case of the National Labor Relations Board v. The Associated Press) which states:

> "The right of employees to organize has been recognized and accepted. When employers attempt to destroy this right, and disregard the representatives chosen by their employees, the strike is the natural and common method of employees to force recognition."

(2) Disputes are Inevitable

The strike - an apparently necessary evil - should not be confused with the industrial dispute, which is even more inevitable but not at all an evil.

Horse-trading is as American as mince pie or baseball. No one condemns the institution because a trader is inclined to make a shrewd swap.

"Horse-trading" in industrial relations is that bargaining which takes place when workers want to sell their services high and employers want to buy cheap. We can no more escape such pressures between employer and employee than the clouds can escape spilling rain when an Artic air current meets one from the Gulf. The question is one of controlling these pressures.

In the old handicraft days disturbances growing out of wage and hour disputes were occasional and local. With the increase of mass production during our times, the field for dangerously disruptive strikes has grown large in proportion.

The true nature of these disputes, as said before, does not lie in sensational strike stories but in the underlying economic causes, and (perhaps as important) in the fair-mindedness of the parties on both sides of the fence.

Conditions, more frequently than men, are today mainly responsible for industrial disputes. These are some of the modern conditions which make disputes inevitable:

There are continual shifts in markets going on in our industrial system. Invention is the mother of industrial disorder. When research discovered how to make rayon out of cheap wood pulp, disorder at once appeared in the markets of silk manufacturers whose high cost material lost markets to the newcomer. The first automobiles forced the carriage makers to enter the new industry or be ruined. Electric refrigerators brought disorder into the ice industry. The possible discovery of a cheap synthetic rubber would disrupt several American cities and send the natives of Sumatra back to jungle huts. All these products of research laboratories, have, of course, produced new wealth; but the point to be considered first here is that their introduction disrupts markets and labor payrolls. Of their very nature such adjustments breed industrial disputes.

Shifts also take place among competing industries. Coal, natural gas, and oil all produce power. The drilling in of a new Texas oil field, or the laying of a new pipeline to an Oklahoma gas field, floods the market with cheap fuel and disrupts the relative markets of the other competitors. A coal operator in Kentucky may suddenly find it hard to meet his payroll

because a wildcat oil driller struck it rich at the other end of the continent.

Likewise, within every single industry there are factors which continually shift markets from one employer to another. New production technique (e.g. the A. O. Smith automatic automobile frame welder); new inventions (e.g. tin beer cans replacing glass bottles); savings effected by consolidations (e.g. chain stores replacing corner grocery stores); shifts in public taste (e.g. away from voluminous women's apparel; or toward living in automobile trailers) - all these spell decreasing profits for one firm and new successes for another.

In this exciting (and often hazardous) game to make profits, the individual employer has his good times and his bad. His workers, having no direct stake in the profits or losses, see only that their livings are subject to shifts beyond their control. They know from experience that the easiest way for an employer to hold the market for his product against stiff competition is to cut his production costs by cutting his workers' wages. They therefore seek protection against wage cuts during slack times, and demand that their wages be raised when profits rise.

The relative merits of the management position compared to the workers' position are not here under discussion. Nor is it a question here whether or not mechanization tends to put men out of work. The simple fact, and the only one under discussion, is that these continually shifting industrial conditions make disputes inevitable.

To protect our easily unbalanced economic system from having such disputes become disastrously violent, there has sprung up a national resolve to find another way out than the futility of industrial warfare.

(3) It is Better for Both Parties to Come Together in the First Place for Peaceful Negotiation

Collective bargaining is the best device yet discovered for avoiding the traditional strike and lock-out. Under collective bargaining the employees elect their representatives, the employers appoint theirs, and the two meet in peaceful discussion of their differences.

Here the fight is with words, not bullets. The negotiators face across a table - with some chance of reaching an agreement - instead of eyeing each other at long range across a barbed wire barricade.

The theory of collective bargaining rests on the fact that a single worker is helpless in presenting his needs to the employer. He may be discharged if he so much as asks to have his needs considered. His single voice only becomes forceful when others join with him to present their joint claims.

The American employer traditionally has hired workers on a take-the-job-or-leave-it basis. Even when the employer wishes to pay his workers well he is often forced to pay less than a living wage because his competitors do so.

The fact of having jobs to offer can be used either as a powerful oppressive weapon or as a great social responsibility. Certainly in the employers' keeping lies the most vital asset a worker owns, his job.

Fair minded people for many years have recognized - and Congress recently has declared it a national policy - that this one-sided bargaining has in the past bred trouble, and, for the national good, should end.

Industry Bargains Collectively

It is a fact that every industry, on its own behalf, uses the device of collective bargaining. For example, when the purchasing agent of a great

corporation sets out to buy raw materials, he is not bargaining for himself as an individual. He is representing a collective group - the company's officers and its stockholders. Likewise, the personnel manager, when he hires a new worker, is engaged in bargaining on behalf of this same collective management group.

Therefore, when the workers ask to have industry meet their representatives to discuss the terms under which they are willing to sell their labor, they are asking no more than equality of bargaining opportunity.

One of the clearest statements of the theory was made by Chief Justice Taft when he said in the case of American Steel Foundries v. Tri-City Central Trades Council (257 U. S. 184, at 209):

> "They (labor unions) were organized out of the necessities of the situation. A single employee was helpless in dealing with an employer. He was dependent ordinarily on his daily wage for the maintenance of himself and family. If the employer refused to pay him the wages that he thought fair, he was nevertheless unable to leave the employ and to resist arbitrary and unfair treatment. Union was essential to give laborers opportunity to deal on equality with their employer. They united to exert influence upon him and to leave him in a body in order by this inconvenience to induce him to make better terms with them. They were withholding their labor of economic value to make him pay what they thought it was worth."

Government Intervention

There is nothing new in intervention by the Federal Government in disputes over attempts of the workers to organize themselves.

In 1888 Congress first passed legislation to improve labor relations on railroads. For 40 years the original law underwent adjustments until it reached the present form administered by the National Mediation Board. The use by railway management and labor of that Board's good offices has removed railroad labor struggles from a field of bloody battle to a plane

of orderly negotiation.

In 1917 a War Labor Board was established to control labor disputes during the rapid industrial adjustments of that period. The Board had emergency powers. It kept industrial peace at home and maintained the production necessary to carry on the War.

In 1933 the experience gained by the War Labor Board was applied to the depression emergency. In order to raise workers from sweatshop conditions and to put employers on an equal competitive basis, a National Labor Board under Senator Wagner was established to enforce the provisions of N. R. A. codes. This Board and its successor, the first National Labor Relations Board, succeeded in keeping more than 1,000,000 men at work upon terms satisfactory both to them and to their employers.

But neither of these Boards had final powers to enforce its orders. A few wage-cutting employers can frighten competitors into cutting wages and into lengthening hours. The lack of authority by these Boards to stop the unfair labor practices of the few employers made apparent the need of a permanent agency with full authority to make fair labor practices the rule for all.

Congressional Search for a Solution

In the Spring of 1934, and again in the Spring of 1935, the Committees on Labor of both the Senate and the House held hearings to bring out the advice of qualified experts on how best to set up a permanent agency to decrease the disastrous strikes which unfair labor practices have caused in the past. In simplified form the sum and substance of the testimony at these hearings was this...The natural purpose of employee groups is to prevent wage-cutting on the part of their employers...Successful employee resistance to wage-cutting helps build more uniform wage conditions throughout industry, and prevents the unethical few employers from keeping industry in

uncertainty and chaos...But a refusal by employers to meet with employee representatives to discuss wage contracts defeats this healthy tendency at the very start of its operations.

Factual proof that refusal by employers to let workers organize and bargain through their representatives is fast becoming the major cause of strikes, lies in the following figures:

During the four post-War years more than half of all strikes were called to obtain better wages and hours. Less than one quarter involved worker attempts to enforce their rights to organize. In the succeeding decade, however, the workers tended to strike less frequently for wage and hour concessions and more often on behalf of their basic rights to present wage proposals to management through their chosen representatives. Thus - except for the low depression years from 1930-33 when workers hardly dared risk their jobs for any purpose - the Department of Labor statistics show a percentage reversal of the causes of strikes. Today nearly half of all strikes are to uphold organization rights, while strikes for better wages and hours have decreased to not much more than one third of the total.

Establishment of the National Labor Relations Board

Guided by the experience of previous Government agencies, the 74th Congress in June, 1935, passed an Act to make the National Labor Relations Board a permanent agency "to diminish the causes of labor disputes burdening or obstructing interstate and foreign commerce."

The Board set up to administer the Act was given two functions:

(1) To conduct employee elections to determine what representatives should have the right to deal with employers, and

(2) To prevent employers from engaging in those unfair practices which destroy the opportunity to bargain collectively.

The Board's primary responsibility under the Act is to see that collective bargaining rights are guarded against restraints and interference. The holding of employee elections is merely a necessary step to assure the free choice of the workers in selecting the representatives who will bargain for them.

There are five unfair labor practices specified. The Act says that the employers (1) may not interfere with his workers' right to organize; (2) that he may not dominate any employee organization; (3) that he may not discriminate against an employee for union activities; (4) that he may not discharge a worker for filing charges under the Act; and (5) that he may not refuse to bargain collectively.

Board Procedure

The Board began active operations in October, 1935. It established Regional Offices in 21 cities throughout the country.

Any employee, feeling that his employer is violating the Act, may file charges with the Board's Regional Director. The Director investigates, and, if the facts warrant, he issues a complaint against the employer.

The facts are developed through witnesses for both sides at a hearing before a Trial Examiner. A regional attorney conducts the case for the Board. The Examiner may dismiss the case, or he may recommend what the employer can do to end unfair practices.

The Board in Washington studies the full record and the Examiner's report. It may dismiss the case, or it may make a decision ordering the employer to cease unfair labor practices.

Similar hearings take place when employees petition the Board either to certify their representatives or to hold an election to select representatives by secret ballot.

The employer is under no penalties during these steps. If he contests a Board decision he can ask for a review of the case in a Circuit Court of Appeals. The Board, on its part, may ask a Circuit Court of Appeals to enforce its order. The first occasion when an employer can suffer a penalty is after such a Court has upheld the Board's order and the employer still persists in refusal to comply. He then puts himself in contempt of the Circuit Court of Appeals.

An appeal from the Circuit Court can be taken by either party to the Supreme Court of the United States.

Difficult legal questions concerning the extent of the Board's powers have arisen, and will arise. The answer to these questions lies in the interpretation of the "commerce clause" of the Constitution of the United States. That interpretation is, under our system of government, the prerogative of the Supreme Court of the United States. That Court has not yet decided any case involving this law.

Disputes Burdening or Obstructing
Interstate and Foreign Commerce

Congress in the National Labor Relations Act declared it to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association.

The necessity for the use of Federal authority "to liminish the causes of labor disputes burdening or obstructing interstate and foreign commerce" is stated in the Act in these words:

"The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association

substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

"Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees."

The First 1000 Cases

Toward the end of June, 1936 - 9 months after it began active operations - the number of cases handled by the Board passed the 1000 mark. The exact figures to July 1, 1936, were 1067. The disposition of these cases is in line with the Board's mandate from Congress to diminish the causes of labor disputes affecting interstate commerce.

686 cases, almost two-thirds of the total, were finally closed and written off the books. In each of these cases a charge of unfair labor practice had been made, or a petition for an election filed with a regional office of the Board. Each case represented a labor controversy. The Board does not mediate disputes. Therefore, the closing of these 686 cases - usually during their preliminary stages and without public announcement - means either that the employer adjusted his labor relations in conformity with the Act, or that the cases were disposed of through orderly procedure. Examples of the latter include dismissal of charges by Regional Directors,

withdrawal of charges by the petitioners themselves, refusal of the Board to assume jurisdiction, transfer of cases to other agencies, such as the Conciliation Service of the Department of Labor, or dismissal of cases by findings that no violation had occurred.

286 of the above cases (or about one-fourth of all cases accepted by the Board) were settled by agreement of both the employer and his employees.

In 130 cases strikes were in progress when the Board intervened. 72, or more than one-half of these strikes, were settled through the good offices of the Board.

52 threatened strikes were averted through the Board's action.

The Board or its Regional Offices conducted 32 elections to determine the workers' choice of their representatives for the purposes of collective bargaining. An analysis of the causes of complaints show that 409 of the total 1067 cases handled up to July 1st concerned Section 8 (3) of the Act, which makes it an unfair labor practice to discriminate against workers because of their union activities. In 287 cases the main cause of complaint was based upon Section 8 (5), the failure of the employer in good faith to bargain collectively with the representatives chosen by employees to deal with the management.

The Board issues a monthly summary of cases handled for the month preceding and cumulative to date.

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